

course, the declarations of the agent made in the course of, and accompanying the transaction would be admissible. *Franklin Bank vs. Steam Company*, 11 *Gill & Johns.*, 28.

But at all events, the circumstance that the grantee gave no instructions himself, being willing to take any deed which the grantor might have prepared, certainly is calculated to show, that the deed was intended rather for the benefit of the latter than the former. We find by the evidence of the same witness, that when the mortgage of November, 1842, was prepared, both parties were present, and the instructions for its preparation were given in the presence and hearing of both, and it is certainly not unreasonable to suppose that if the grantee had felt himself to be interested in the deed of 1844, he would have given some instructions in regard to it.

Taking, then, these declarations as evidence, and considering them in connection with all the other evidence in the cause, I am of opinion, that the deed of the 16th of February, 1844, cannot be supported, as against the creditors of the grantor, which makes it necessary to inquire whether these complainants, or any of them, have established their right, as creditors to call them in question. Sarah Ann Twist was one of the parties in the original bill which was filed on the 25th of August, 1845, and her claim, therefore, for \$1,100, founded on the note of Elizabeth Osborne, dated the 6th of November, 1843, at twelve months, is certainly within time, and I think she has a standing in court, as a creditor, in respect of that note.

By an amended bill, filed as of the 1st of April, 1851, certain other parties come in as complainants, and I am of opinion, that according to the law and practice of this court, there is no objection to their coming in at that stage of the cause. *Hall vs. Creswell et al.*, 12 *Gill & Johns.*, 36. But, although they may come in as co-complainants, with the originally suing creditors, limitations will run against their claims until they do so come in, and file them. This point, also, was expressly decided by the case last cited. Certain of the parties to the amended bill, have proved their claims, to wit: Walter Crook, Hyde & Carter, Hamilton Easter & Co., Harrison & Co., and Ann